

AO 120 (Rev. 2/99)

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**REPORT ON THE
 FILING OR DETERMINATION OF AN
 ACTION REGARDING A PATENT OR
 TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been
 filed in the U.S. District Court Northern District of California on the following ☒ Patents or ☐ Trademarks:

DOCKET NO. CV 11-05587 LB	DATE FILED 11/17/2011	U.S. DISTRICT COURT Northern District of California, 1301 Clay St., Rm 400S, Oakland, CA 94612
PLAINTIFF APPLE INC		DEFENDANT GRAPHICS PROPERTIES HOLDINGS INC
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 6,650,327		SEE ATTACHED
2 7,518,415		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1		SEE ATTACHED
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT

CLERK Richard W. Wicking	(BY) DEPUTY CLERK	DATE
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Copy 1—Upon initiation of action, mail this copy to Commissioner Copy 3—Upon termination of action, mail this copy to Commissioner
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner Copy 4—Case file copy

1 GEORGE A. RILEY (S.B. #118304)
2 griley@omm.com
3 O'MELVENY & MYERS LLP
4 Two Embarcadero Center, 28th Floor
5 San Francisco, California 94111-3823
6 Telephone: (415) 984-8700
7 Facsimile: (415) 984-8701

8 RYAN K. YAGURA (S.B. #197619)
9 ryagura@omm.com
10 O'MELVENY & MYERS LLP
11 400 South Hope Street
12 Los Angeles, California 90071-2899
13 Telephone: (213) 430-6000
14 Facsimile: (213) 430-6407

15 Attorneys for Plaintiff
16 APPLE INC.

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA

ORIGINAL
FILED

NOV 17 2011

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT,
NORTHERN DISTRICT OF CALIFORNIA

LB

11 5587

19 APPLE INC., a California corporation,

20 Plaintiff,

21 v.

22 GRAPHICS PROPERTIES HOLDINGS,
23 INC., a Delaware corporation,

24 Defendant.

Case No.

COMPLAINT FOR DECLARATORY
JUDGMENT OF NON-
INFRINGEMENT AND INVALIDITY
OF PATENTS

DEMAND FOR JURY TRIAL

1
2 Plaintiff Apple Inc. ("Apple") alleges against Defendant Graphics Properties Holdings,
3 Inc. ("GPH") as follows:

4 **NATURE OF THE ACTION**

5 1. This is an action for declaratory judgment of non-infringement and invalidity of
6 two United States patents pursuant to the Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202,
7 and the patent laws of the United States, 35 U.S.C. § 100 *et seq.*

8 2. Apple seeks a judicial declaration that Apple's products do not infringe United
9 States Patent Nos. 6,650,327 ("the '327 Patent") (Exhibit A) and 7,518,615 ("the '615 Patent")
10 (Exhibit B) (collectively, "the Patents-in-Suit") and that the Patents-in-Suit are invalid.

11 3. GPH asserted the Patents-in-Suit against Apple in a case before the United States
12 District Court for the Southern District of New York. GPH dismissed the New York case against
13 Apple without prejudice. On information and belief, GPH also asserted the Patents-in-Suit
14 against Apple in a Complaint recently filed with the United States International Trade
15 Commission ("USITC"). GPH also dismissed that Complaint without prejudice shortly after its
16 filing. Thus, an actual, substantial, and continuing justiciable controversy exists between GPH
17 and Apple that requires a declaration of rights by this Court.

18 **THE PARTIES**

19 4. Plaintiff Apple is a California corporation with its principal place of business at
20 1 Infinite Loop, Cupertino, California 95014.

21 5. On information and belief, Defendant GPH is a Delaware corporation with its
22 principal place of business at 56 Harrison Street, Suite 305C, New Rochelle, New York 10801.

23 **JURISDICTION AND VENUE**

24 6. Apple brings this action under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-
25 2202, for a declaratory judgment of non-infringement and invalidity of the Patents-in-Suit under
26 the Patent Laws of the United States, 35 U.S.C. §§ 101 *et seq.* This Court has subject matter
27 jurisdiction pursuant to 28 U.S.C. §§ 1331, 1337, and 1338.

28 7. This Court has personal jurisdiction over GPH by virtue of GPH's purposeful,
repeated, and constitutionally sufficient contacts with California to make personal jurisdiction

proper in this Court. On June 4, 2009, Silicon Graphics, Inc. changed its name to Graphics Properties Holdings, Inc. Exhibit C at p. 3. According to its public filings with the United States Securities and Exchange Commission ("SEC"), at that time GPH maintained an office in the Northern District of California at 1140 East Arques Ave., Sunnyvale, California 94085. *Id.* at p. 1. GPH continues to use this address in its business registration with the California Secretary of State. Exhibit D. In addition, according to public filings with the SEC dated November 9, 2009 and January 19, 2010, GPH maintained an office in the Northern District of California at 525 University Ave., Suite 220, Palo Alto, California 94301. Exhibit E at p. 4; Exhibit F at p. 1. On information and belief, GPH has also negotiated and entered into licenses under the Patents-in-Suit with other entities in the Northern District of California. On information and belief, GPH derives the benefit of these licenses, including benefits arising out of activities in California.

8. Venue in this district is established under 28 U.S.C. §§ 1391(b) and (c).

BACKGROUND

9. On information and belief, the Patents-in-Suit were issued by the United States Patent and Trademark Office and are assigned to GPH.

10. The Patents-in-Suit arise from the same parent application and are both entitled "Display System Having Floating Point Rasterization and Floating Point Framebuffering."

11. On November 16, 2010, GPH filed a Complaint for Patent Infringement in the United States District Court for the Southern District of New York naming Apple as a Defendant (the "New York Action"). See Exhibit G. In the New York Action, styled *Graphics Properties Holdings, Inc. v. Nintendo Co., Ltd., et al.* (Case No. 1:10-cv-8655-WHP), GPH accused Apple's products of infringing the Patents-in-Suit. *Id.* at ¶¶ 14, 16, 26-27, 36-37.

12. On July 13, 2011, GPH stipulated to dismissing the New York Action against Apple without prejudice. See Exhibit H.

13. On or about November 16, 2011, GPH filed a complaint with the USITC pursuant to Section 337 of the Tariff Act of 1930, as amended regarding *Certain Consumer Electronics and Display Devices* (Docket No. 2857) (the "ITC Action"). See Exhibit I. GPH's complaint in the ITC Action named Apple as a Respondent. See *id.* On information and belief, GPH filed the

complaint to request that the ITC commence an investigation regarding Apple's alleged infringement of the Patents-in-Suit.

14. On or about November 16, 2011, GPH withdrew its complaint in the ITC Action without prejudice. See Exhibit J.

15. Based on GPH's repeated assertions of patent infringement by Apple, an actual, substantial, and continuing justiciable controversy exists between GPH and Apple that requires a declaration of rights by this Court.

16. As stated above, GPH alleged in the New York Action that Apple infringes the Patents-in-Suit through the manufacture and distribution of certain products. Also as stated above, on information and belief, GPH filed the ITC Complaint and is presently alleging that Apple infringes the Patents-in-Suit through the importation and sale of certain products.

17. Therefore, at the present time, an actual controversy exists between Apple, on the one hand, and GPH, on the other, as to Apple's alleged infringement of the Patents-in-Suit and the invalidity of those patents. This controversy is of such immediacy and reality as to warrant declaratory relief so that the parties may ascertain their rights and duties with respect to the Patents-in-Suit.

COUNT ONE

Declaratory Judgment of Non-Infringement of the Patents-in-Suit

18. Apple realleges and incorporates herein by reference the allegations in paragraphs 1 through 17 above.

19. GPH has alleged and continues to allege that Apple and its products infringe the Patents-in-Suit.

20. Apple has not infringed and is not now infringing directly or indirectly, and has not induced or contributed to and is not now inducing or contributing to the infringement of, any claim of the Patents-in-Suit, either literally or by application of the doctrine of equivalents.

21. Apple seeks a declaratory judgment from this Court under Rule 57 of the Federal Rules of Civil Procedure and 28 U.S.C. §§ 2201-2202 declaring that Apple is not infringing and has not infringed the Patents-in-Suit and granting Apple all other declaratory relief to which it

1
2 may be entitled.

3 **COUNT TWO**

4 **Declaratory Judgment of Invalidity of the Patents-in-Suit**

5 22. Apple realleges and incorporates herein by reference the allegations in paragraphs
6 1 through 21 above.

7 23. The claims of the Patents-in-Suit are invalid because they fail to comply with one
8 or more requirements of the Patent Laws of the United States, including, but not limited to, 35
9 U.S.C. §§ 101, 102, 103, 112 and/or 116.

10 24. Apple seeks a declaratory judgment from this Court under Rule 57 of the Federal
11 Rules of Civil Procedure and 28 U.S.C. §§ 2201-2202 declaring that the Patents-in-Suit are
12 invalid and granting Apple all other declaratory relief to which it maybe entitled.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Apple prays for judgment and relief as follows:

- 15 1. That Apple has not infringed, contributed to the infringement of, nor induced
16 infringement of any claim of the Patents-in-Suit;
- 17 2. That the Patents-in-Suit are invalid;
- 18 3. That this case is exceptional under 35 U.S.C. § 285;
- 19 4. For reasonable attorneys' fees pursuant to 35 U.S.C. § 285;
- 20 5. For further necessary or proper relief pursuant to 28 U.S.C. §§ 2201-2202; and
- 21 6. For such other relief as the Court deems just and proper.

22 **DEMAND FOR JURY TRIAL**

23 Apple hereby demands a jury trial in this action.

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2 Dated: November 17, 2011

Respectfully submitted,

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4 By: George A. Riley / by *Tham Simon*
5 George A. Riley

6 GEORGE A. RILEY
7 O'MELVENY & MYERS LLP
8 Two Embarcadero Center, 28th Floor
9 San Francisco, CA 94111-3823
10 Telephone: (415) 984-8700
11 Facsimile: (415) 984-8701

12 RYAN K. YAGURA
13 O'MELVENY & MYERS LLP
14 400 South Hope Street
15 Los Angeles, CA 90071-2899
16 Telephone: (213) 430-6000
17 Facsimile: (213) 430-6407

18 *Attorneys for Plaintiff Apple Inc.*
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